

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Cause No. 19-1211 JB
vs.	)	
	)	
	)	
LARRY MITCHELL HOPKINS,	)	
	)	
Defendant.	)	

THIRD UNOPPOSED MOTION TO VACATE TRIAL SETTING

COMES NOW, the Defendant, Larry Mitchell Hopkins, by and through his attorney of record, Kelly O'Connell, pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (D), and consistent with the Tenth Circuit Court of Appeals holding in *United States v. Toombs*, 574 F.3d 1262 (10<sup>th</sup> Cir. 2009), moves to continue the trial setting in the above-styled and numbered cause currently set for December 2, 2019. As grounds the government states:

1. On July 30, 2019 this Court ordered an evaluation of mental competency. Per the order, "further proceedings are postponed until the report is received and a competency hearing is convened." Doc. 24.
2. A letter received from the Court on October 31, 2019 indicates the competency evaluation is scheduled for November 8, 2019. Doc. 25. At this point, half the exam is done and the second part is scheduled for the week of November 24<sup>th</sup>, 2019. At a minimum, additional time will be needed to receive the report and schedule a competency hearing. The time from the filing of a motion to the time the Court rules on the motion or holds a hearing is excluded from Speedy Trial calculations. 18 U.S.C. §§ 3161(h)(7)(D).

3. The United States concurs in this motion and requests that the Court grant the relief sought. The Defendant waives any right to a speedy trial in requesting this continuance.

Pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and (D), such time between the Speedy Trial deadline and the commencement of the trial should be excluded for purposes of the Speedy Trial Act because a competency evaluation is pending before the Court and because the ends of justice that would be served by granting the requested continuance outweigh the best interests of the public and the defendant in a speedy trial.

Wherefore, Defendant, Larry Mitchell Hopkins, respectfully requests that the December 2<sup>nd</sup>, 2019 trial date be vacated and the matter rescheduled. The Defendant further requests that the motions deadline be extended by a similar time period.

Respectfully submitted,

*Electronically filed*

KELLY O'CONNEL  
200 S. Water Street  
Las Cruces, NM 88001  
Attorney for Defendant

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to opposing counsel of record.

*Filed Electronically*  
KELLY O'CONNELL